

### **REMARKS**

Claims 1-29 and 103 are pending in this application. In an Office Action dated December 2, 2005, the Examiner made rejections of the pending claims final. Claim 103 was alleged to be indefinite under 35 U.S.C. § 112 ¶2, claims 1-8, 18-22, 28-29, and 103 were alleged to be anticipated under 35 U.S.C. § 102(e) by Wilmott et al. (U.S. Pat. No. 6,782,307), claims 9-12 were alleged to be obvious under 35 U.S.C. § 103(a) over Wilmott et al., and claims 13-17 were alleged to be obvious under 35 U.S.C. § 103(a) over Wilmott et al. in view of Bieganski (U.S. Pat. No. 6,321,221).

On January 24, 2006, Counsel for Applicants briefly spoke with the Examiner about scheduling an interview to discuss the rejections in this Application, and the Examiner agreed to hold a telephonic interview on January 30, 2006. In preparation for the interview, Applicants faxed a set of proposed claims to the Examiner on January 25, 2006. The facsimile is attached to this Reply as Appendix A, and the proposed claims contained therein provided the framework for discussion during the interview.

With the exception of two minor items discussed below, claims 1, 9-20, 22-23, and 103 have been amended to comport with the proposed claims that were discussed during the January 30, 2006 interview. Based on the impressions expressed by the Examiner during the Interview, the amendments in this Reply obviate all of the rejections noted above. Applicants also have made minor amendments to paragraph 0031 of the specification for grammatical and clarity purposes. No new matter is added in this Reply, and Applicants respectfully request that the Examiner withdraw the current rejections and issue a Notice of Allowance.

### **Interview Summary**

Applicants thank the Examiner for having made time in her schedule to discuss this Application with their Counsel on January 30, 2006. Pursuant to MPEP § 713.04, the following remarks summarize the substance of the matters discussed and the agreements reached during the interview.

Counsel initially noted that the Examiner had contended, in the Dec. 2, 2005 Office Action, that certain limitations relied upon by Applicants in their Aug. 19, 2005 Reply were not recited in the pending claims; and that the Examiner had also stated in the same Office Action that claims are to be interpreted in light of the specification, but that limitations from

the specification are not to be read into the claims (*see* Dec. 2, 2005 Office Action at pp. 10-12). Counsel commented that Applicants had argued patentability of the claims pending at the time based on the limitations recited in their Aug. 19, 2005 Reply because Applicants considered the limitations to be implicit in the “operating on the inputs with a data processing portion of the [intelligent performance-based] product recommendation engine” step when read in view of the specification. Counsel also commented that because the limitations implicit in the foregoing “operating on the inputs step” were explicitly recited in the proposed claims, the foregoing “operating on the inputs step” had been deleted in the proposed claims.

Counsel for Applicants and the Examiner then discussed the substance of the proposed claims and how, in general, the method in proposed claim 1 and the computer-readable medium in proposed claim 103 generates product recommendations. During the course of that discussion Counsel noted that he may have erroneously stated or created the impression, in the Aug. 19, 2005 Reply, that the claimed method and medium generally or necessarily, produces product recommendations based on predicted *performance* of product(s), but that this is not the case. Counsel noted that the product recommendations can be based on a likelihood of addressing whatever requirement is specified by the consumer, such as, for example, a likelihood that the consumer will *prefer* a product based on data about suitably similar consumers who used that or a suitably similar product in the past. In other words, if the requirement specified in the inputs is a preference, the claimed method and medium will classify the consumer, based on the inputs, in a population of consumers who previously used a product in a product category and who are substantially similar to the consumer, and will determine, based on the inputs and the classification of the consumer, a likelihood that the products in the product category will be preferred by the consumer with a predefined level of success when used in connection with the target substrate. Counsel for Applicants also noted that the specification provides support for the proposed claims. Particular citations to the specification were not discussed in the interview, but Applicants point out the following examples in this Reply: Paragraph 0031: “The output(s) of the system comprise sets of products that it predicts the consumer will *prefer and/or perform well* for the problem or concern identified by the consumer” (emphasis added); Paragraph 0053: “the product recommendation engine ... infers predicted *performance and/or*

*preference* for products for an individual consumer based on the data and processing elements described above” (emphasis added); and Paragraphs 73-86, discussing “Outputs.”

Counsel for Applicants and the Examiner also discussed use of the term “requirement” in the proposed claims (i.e., “receiving a first set of data from a consumer regarding a target substrate that includes a *requirement* to be addressed by a product”)(emphasis added). Counsel noted that Applicants are using the term in its ordinary dictionary sense – “something wanted or needed”<sup>1</sup> – and that use of the term is supported by the specification. During the interview, Counsel specifically referenced the Problem Summary, and agreed to cite particular portions of the specification in this Reply. Counsel notes the following exemplary portions of the specification, each of which supports this view and use of the term “requirement” in the claims: Paragraph 0029: “[C]onsumers often have great difficulty in knowing or determining whether some, all, or none of their *needs* are being met by a particular product he or she may be using. This is particularly true where the *need* being addressed by a product is characterized by an incremental response” (emphasis added); Paragraph 0031: “The data comprises subjective and/or objective product information received from consumers or input to the system as part of its initial setup and characterization of consumers that allows finding commonalties among the consumers in terms of similar *requirements* or responses” (emphasis added)<sup>2</sup>; Paragraph 0053: “The bases for product recommendations may include, but are not limited to: ... b) detailed information about each characteristic of a particular consumer’s interests, including but not limited to his or her *requirements*” (emphasis added); and Paragraph 0052: “[A]ncillary information may cover any number of topics ... such as the *needs* of a consumer, and the like” (emphasis Added).

While discussing the proposed claims, the Examiner expressed concern about two points – 1) use of the phrase “if used” in the “determining” step of proposed claims 1 and 103 (i.e., “determining ... with a predefined level of success *if used* in connection with the target substrate”)(emphasis added); and 2) not reciting a “program” in the preamble of proposed claim 103 (i.e., “A computer-readable medium having computer-executable instructions for performing steps comprising”). Regarding the first point, the Examiner inquired whether “if

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<sup>1</sup> See Dictionary definition of “requirement” at Appendix B.

<sup>2</sup> Applicant is citing to paragraph 0031 of the specification as amended in this Reply, which makes minor modifications to the introductory language of this sentence for grammatical and clarification purposes.

used” could be positively recited as “when used.” Counsel for Applicants stated that he had no objection to the “when used” formulation, so long as it was understood and agreed that actual use of a recommended product by the consumer was not required by the method in proposed claim 1 or the medium in proposed claim 103. Counsel for Applicants further explained that, in the determining step, the method and the instructions residing on the medium determine *likelihoods* that the products in the product category will address a specified requirement when used in connection with the target substrate, but that neither the method nor the medium claim requires that the products actually be used in connection with the target substrate to obtain the likelihoods or after product recommendations are generated. The Examiner understood and agreed with Counsel’s position, and claims 1 and 103 in this Reply both recite “when used” instead of “if used” as requested by the Examiner. Applicant considers this change in phraseology to be non-substantive in nature, with no range of equivalency having been surrendered due to the change.

Regarding the second point raised by the Examiner during the interview -- not reciting a “program” in the preamble of proposed claim 103 – the Examiner agreed that inclusion of the phrase “a program with” after “having” would address her concern (i.e., reciting “A computer-readable medium having *a program with* computer-executable instructions for performing steps comprising”)(emphasis added). Like the minor modifications associated with the first point raised by the Examiner, Applicants consider this change to be non-substantive in nature, with no range of equivalents being surrendered due to the change.

Additional topics discussed in the interview dealt with the status of Wilmott et al. as prior art to this Application, and consideration by the Examiner of certain references in the Supplemental Information Disclosure Statement filed by Applicants on September 29, 2005. Regarding the status of Wilmott et al., Counsel noted that even though Applicants have opted to address Wilmott et al. on the merits, Applicants still maintain that Wilmott et al. is not prior art to this Application, and that Applicants’ decision to address Wilmott et al. on the merits should not be considered an admission that Wilmott et al. is prior art in this or any future proceeding or appeal. Regarding consideration of the Sep. 29, 2005 Supplemental Information Disclosure Statement (the “IDS”), Counsel for Applicants noted that the Examiner stated in the Dec. 2, 2005 Office Action that she considered the references cited in the IDS, but that the Examiner had not initialed reference numbers 119-122 or signed page 5

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of the IDS. The Examiner indicated that she had considered all of the references in the IDS, and that she would initial for having done so and sign page 5 of the IDS.

Finally, the Examiner indicated that she believed the proposed claims, with the minor modifications discussed above, would obviate the pending rejections under 35 U.S.C. §§ 102, 103, and 112.

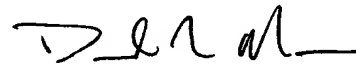
#### **Comments Regarding Claims 9-20 and 22-23**

Claims 9-20 and 22-23 were not discussed during the January 30, 2006 interview, but all are dependent on claim 1, and all of the amendments made to these claims in this Reply, with the exception of claim 22, merely conform them to the language now used in claim 1. The amendment to claim 22 deletes an errant inclusion of the word "an" before the term "and" (i.e., "generating [[an]] and delivering a web page").

#### **CONCLUSION**

The claims in this Application define novel, non-obvious subject matter, and Applicants respectfully request that a Notice of Allowance be issued. Applicants thank the Examiner again for discussing this Application with their Counsel, and request that the Examiner contact him, pursuant to MPEP § 713.09, should any further discussion be considered necessary to place this Application in a condition for Allowance.

Date: January 31, 2006



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# Appendix A



# FACSIMILE

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Dear Examiner Thein:

As briefly discussed by telephone, enclosed are proposed amendments to the claims for discussion on Monday, January 30, 2006 at 11 A.M.

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David

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**PROPOSED Listing of Claims:**

1. (Currently Amended)      A method of formulating individualized product recommendations, comprising:

receiving a first set of data from a consumer regarding a target substrate that includes a requirement to be addressed by a product; and

generating a set of individualized product recommendations for the consumer from a plurality of products within a product category with the assistance of one or more computing devices, the generating comprising:

\_\_\_\_\_ feeding the first set of data as inputs into an intelligent performance-based product recommendation engine;[[,]]

\_\_\_\_\_ classifying the consumer, based on the inputs, in a population of consumers who previously used a product in the product category and who are substantially similar to the consumer operating on the inputs with a data processing portion of the product recommendation engine;

\_\_\_\_\_ determining, based on the inputs and the classification of the consumer, a likelihood that the products in the product category will address the requirement with a predefined level of success if used in connection with the target substrate; and

\_\_\_\_\_ selecting a set of products from the product category having a predefined likelihood of successfully addressing the requirement, the selected set of products producing a set of outputs from the data processing portion of the product recommendation engine[[, the outputs]] comprising the set of individualized product recommendations.

2. (Original)      The method of claim 1 wherein the receiving a first set of data step comprises receiving a concern about the substrate.

3. (Original)      The method of claim 2 further comprising receiving a severity of the concern.



4. (Original) The method of claim 2 further comprising receiving an importance of the concern.

5. (Original) The method of claim 1 further comprising receiving a second set of data from the consumer, the second set of data comprising historical product data, and wherein the first and second sets of data comprise the inputs into the product recommendation engine.

6. (Original) The method of claim 5 wherein the receiving a second set of historical product data step comprises receiving performance data for products used by the consumer in the past.

7. (Original) The method of claim 5 wherein the receiving the second set of historical product data step comprises receiving preference data for products used by the consumer in the past.

8. (Original) The method of claim 1 further comprising receiving a third set of data from the consumer, the third set of data comprising personal profile information about the consumer, and wherein the first and third sets of data comprise the inputs into the product recommendation engine.

9. (Currently Amended) The method of claim 1 wherein the classifying and determining steps ~~operating on the inputs with a data processing portion of the product recommendation engine step~~ comprise[[s]] operating on the inputs with a neural network ~~portion of the product recommendation engine~~.

10. (Currently Amended) The method of claim 1 wherein the classifying and determining steps ~~operating on the inputs with a data processing portion of the product recommendation engine step~~ comprise[[s]] operating on the inputs with a collaborative filter ~~portion of the product recommendation engine~~.

11. (Currently Amended) The method of claim 1 wherein the classifying and determining steps ~~operating on the inputs with a data processing portion of the product recommendation engine step~~ comprise[[s]] operating on the inputs with a content-based filter ~~portion of the product recommendation engine~~.

12. (Currently Amended) The method of claim 1 wherein the classifying and determining steps ~~operating on the inputs with a data processing portion of the product recommendation engine~~ comprise[[s]] operating on the inputs with a cascaded content-based filter and collaborative filter ~~portion of the product recommendation engine~~.

13. (Currently Amended) The method of claim 1 wherein the set of individualized product recommendations ~~producing a set of outputs step~~ comprises [[producing ]]a first list of products and a scored predicted performance utility for each listed product.

14. (Currently Amended) The method of claim 1 wherein the set of individualized product recommendations ~~producing a set of outputs step~~ comprises [[producing ]]a first list of top-N products and a scored predicted performance utility for each listed product.

15. (Currently Amended) The method of claim 1 wherein the set of individualized product recommendations ~~producing a set of outputs step~~ comprises [[producing]] a first list of products and a scored predicted preference utility for each listed product.

16. (Currently Amended) The method of claim 1 wherein the set of individualized product recommendations comprises [[producing ]]a first list of top-N products and a scored predicted product preference utility for each listed product.

17. (Currently Amended) The method of claim 1 wherein the set of individualized product recommendations ~~producing a first of outputs step~~ comprises

[[producing ]]a first list of products and a purchase price for each listed product.

18. (Currently Amended) The method of claim 1 further comprising generating ancillary information [[output]] from the product recommendation engine inputs.

19. (Currently Amended) The method of claim 18 wherein the [[generating ]]ancillary information [[output step ]]comprises [[generating ]]information regarding effects of at least one of the products.

20. (Currently Amended) The method of claim 18 wherein the [[generating]] ancillary information [[step ]]comprises [[generating ]]information regarding the condition of the target substrate relative to a designated population of consumers.

21. (Original) The method of claim 1 further comprising:  
communicating the set of individualized product recommendations to the consumer.

22. (Currently Amended) The method of claim 21 wherein the communicating step comprises generating [[an]] and delivering a web page containing the recommendations to the consumer.

23. (Currently Amended) The method of claim 1 further comprising:  
receiving feedback from the consumer regarding use of a product in connection with[[to treat]] the target substrate.

24. (Original) The method of claim 23 wherein the receiving feedback step comprises receiving feedback from the consumer regarding use of a previously recommended product.

25. (Original) The method of claim 23 wherein the receiving feedback step comprises receiving preference data regarding the product.

26. (Original) The method of claim 23 wherein the receiving feedback comprises receiving performance data regarding the product.

27. (Original) The method of claim 23 further comprising:  
re-training the product recommendation engine based on the feedback.

28. (Original) The method of claim 1 wherein the receiving a first set of data from a consumer step comprises receiving a first set of data about the consumer's skin, and the generating a set of individualized product recommendations for the consumer step comprises generating a set of individualized product recommendations from a plurality of skin-care products.

29. (Original) The method of claim 1 further comprising receiving a payment from the consumer.

30 -102. (Cancelled)

103. (Currently Amended) A computer-readable medium having computer-executable instructions for performing steps~~system for generating individualized product recommendations~~, comprising:

~~one or more computing devices operatively connected to each other and having executable code residing thereon that when run:~~

receiving[[es]] a first set of data from a consumer regarding a target substrate that includes a requirement to be addressed by a product; and

generating[[es]] a set of individualized product recommendations for the consumer from a plurality of products within a product category by: [[,]]

~~[[the generating comprising]]~~ feeding the first set of data as inputs into an intelligent performance-based product recommendation engine[[,]];

classifying the consumer, based on the inputs, in a population of consumers who are substantially similar to the consumer and who previously used a product in the product category~~operating on the inputs with a data processing portion of the product~~

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~~recommendation engine;~~

determining, based on the inputs and the classification of the consumer, a likelihood that the products in the product category will address the requirement with a predefined level of success if used in connection with the target substrate; and

selecting a set of products from the product category having a predefined likelihood of successfully addressing the requirement, the selected set of products producing a set of outputs from the data processing portion of the product recommendation engine comprising the set of individualized product recommendations.

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# Appendix B



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